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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 409.

TENNESSEE COAL, IRON AND RAILROAD COMPANY, ET AL.,
Petitioners,

v.

MUSCODA LOCAL No. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, ET AL.,
Respondents.

MOTION OF SLOSS, SHEFFIELD STEEL & IRON COMPANY FOR LEAVE TO FILE OUT OF TIME AND PETITION FOR REHEARING.

E. L. ALL,
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S. M. BRONAUGH,
Birmingham, Alabama,
Attorneys for Petitioner, Sloss, Sheffield Steel & Iron Company.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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MOTION OF SLOSS, SHEFFIELD STEEL & IRON COMPANY FOR LEAVE TO FILE OUT OF TIME FOR REHEARING.

Now comes Sloss, Sheffield Steel & Iron Company, petitioner herein, and moves this Court for an order permitting it to file out of time a petition for rehearing in this case, a copy of which petition for rehearing is attached hereto and by reference made a part hereof, and in support of its motion represents that:

This Court, on March 27, 1944, rendered its decision in this case holding that travel time in underground iron ore

mines should be included in the "work-day" or "work-week" for which compensation should be paid under the Fair Labor Standards Act of June 25, 1938, Chap. 678, Sec. 152, Stat. 1060.

The time provided in Rule 33 of the rules of this Court for filing a petition for rehearing expired on April 21, 1944.

Counsel for petitioner have only recently learned that on or about May 6, 1944, there was filed in this Court and docketed as Case No. 969, October Term, 1943, a Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit to review directly the decision of the United States District Court for the Western District of Virginia (53 Fed. Supp. 935) in the case entitled *Jewell Ridge Coal Corporation* v. *Local No. 6167, United Mine Workers of America, et al.*, holding that travel time in underground coal mines should not be included in the "work-day" or "work-week" for which compensation should be paid under the Fair Labor Standards Act. In view of the importance of the question involved to the entire underground mining industry of the nation, this Court should re-examine its decision in the present case in the light of the arguments and facts which it will then have before it both in the present case involving underground iron ore mines, and in the above named case involving underground coal mines.

Counsel for petitioner have likewise only recently learned that there is a general misunderstanding throughout the country as to the extent of the Court's decision in the present case, and that many claims for compensation are being made for travel time on the surface under a great variety of circumstances, which in the interest of justice and in the public interest warrants a re-examination of the present case by this Court.

This motion and the attached petition for rehearing have been prepared with due diligence since counsel for petitioner learned of the filing of the Petition for Writ of Certiorari in Case No. 969 above referred to.

WHEREFORE, petitioner prays that this Court enter an order permitting the filing instanter of the attached petition for rehearing.

SLOSS, SHEFFIELD STEEL & IRON COMPANY,

By E. L. ALL,
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Birmingham, Alabama.

S. M. BRONAUGH,
2100 Comer Building,
Birmingham, Alabama,
Attorneys for Petitioner, Sloss, Sheffield Steel & Iron Company.

CERTIFICATE.

I, E. L. All, one of the attorneys for petitioner, do hereby certify that the facts stated in the foregoing Motion are true to the best of my knowledge.

.....

Dated: May 26, 1944.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 409.

TENNESSEE COAL, IRON AND RAILROAD COMPANY, ET AL.,
Petitioners,

v.

MUSCODA LOCAL NO. 123, Affiliated with INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, ET AL.,
Respondents.

PETITION OF SLOSS, SHEFFIELD STEEL & IRON COMPANY FOR REHEARING.

Comes now the above named petitioner, Sloss, Sheffield Steel & Iron Company, and presents this its petition for a rehearing in the above entitled case and, in support thereof, respectfully alleges that:

1. The majority of the Court erroneously assumed that the question for decision was whether a particular exertion, mental or physical, constituted work or employment within the meaning of the statute and was therefore a question of fact, whereas the term of the statute to be construed was "work-week".

2. The majority of the Court overlooked or misapprehended the significance of the fact of common knowledge that the customs, practices, and contracts in different industries at the time of the passage of the Act varied widely as to what was included in the "work-day" or "work-week" for which compensation should be paid, and that some state legislatures had provided that all travel time in underground mines should be included, some that only the time at the actual working places should be included, and, at least one had provided for the inclusion of travel time one way. These statutes which included travel time, in whole or in part, were explicit to that effect, evidencing a conception of necessity for such definition.

3. The majority of the Court overlooked or disregarded the fact that the term "work-week" as used in the Act of Congress in respect of underground mining had been construed for twenty years by all concerned, the United Mine Workers, the Lessees, and the public officials charged with the duty of enforcement as not including travel time and that no question had ever been raised by anybody over such construction.

4. The majority of the Court erroneously held that the question for decision was one of fact to be decided in each case as the individual judge or trier of fact should determine.

5. The majority of the Court overlooked or disregarded the fact that the District Court did not find whether it had ever been the custom, practice or agreement of the petitioner to compensate its employees in its underground iron ore mines for travel time, and the undisputed evidence is that by invariable practice, custom or agreement such employees were never compensated for travel time prior to the passage of the Act.

6. The majority of the Court overlooked or disregarded the fact that as was stated by the Solicitor General in the

oral argument of the present case, the portal-to-portal method had not been prevailing in any iron ore or bituminous coal mine anywhere in the United States except in the two states where statutes required it.

7. The majority of the Court erroneously held that the findings of fact of the District Court were relevant to the question of the intention of Congress in the enactment of the statute.

8. The findings of fact (collective) of the District Court with respect to the conditions of, and circumstances incident to, travel of the employees from the portal of the mines to the working places underground, are not material to the processes of arriving at the Congressional intent.

9. The majority of the Court overlooked or disregarded the fact that the real question for decision was whether in prescribing a forty-hour "work-week" for all industry without defining the term "work-week" the Congress intended to invalidate agreements fairly arrived at by the process of collective bargaining or in established customs and standards of particular industries.

10. The majority of the Court erroneously held that contract and custom were immaterial.

11. The majority of the Court overlooked or disregarded the effect of the Court's decisions in *William* v. *Jacksonville Terminal Co.*, 315 U. S. 386, and *Walling* v. *Belo Corporation*, 316 U. S. 624.

12. The majority of the Court overlooked or disregarded the history of the interpretation of terms of the same or similar import which have been employed in statute and administrative regulations and construed by administrative officials charged with the duty of administration and enforcement, and by the parties to whom such terms were applied.

13. The questions of law, and of the facts and circumstances insofar as they are material to the interpretation of the term "work-week," undefined in the Fair Labor Standards Act, are so essentially the same in this case and in the case entitled *Jewell Ridge Coal Corporation* v. *Local No. 6167, United Mine Workers of America, et al.*, now pending in this Court upon petition for writ of certiorari to the United States Circuit Court of Appeals for Fourth Circuit to review directly the decision of the United States District Court for the Western District of Virginia (53 Fed. Supp. 935) as to require that the two causes be considered together by this Court.

14. The majority of the Court overlooked or disregarded the fact that the Solicitor General in oral argument of this case conceded that the last two contracts entered into between the Tennessee Company and the Union on behalf of the Respondents, and the last contract entered into between the Sloss Company and the Union on behalf of the Respondents, were not coerced, and the further fact that all of the former contracts or agreements (contended to have been coerced) contained the same provision with respect to work time, and that these agreements merely carry forward the traditional custom and practice which had uniformly existed in the iron ore mining industry for more than fifty years.

15. The record does not show a concurrence of the lower Courts (District Court and Circuit Court of Appeals) with respect to pertinent facts. The majority opinion of the Circuit Court of Appeals took the position, not of concurrence, but that it should not disturb the District Court's findings of fact "unless clearly erroneous".

16. As between the two interpretations of the term "work-week", undefined in the Fair Labor Standards Act, contended for by the parties, the findings of fact of the District Court are not significant.

17. The statute relating to "Hours of Service" providing for periods of continuous rest for employees of railroad companies, and the interpretation of that statute by the courts, are not apposite upon the question of what constitutes compensable work within the meaning of the Fair Labor Standards Act.

WHEREFORE, petitioner respectfully prays that this Court enter an order granting this petition for rehearing.

Respectfully submitted,

SLOSS, SHEFFIELD STEEL & IRON COMPANY,

By E. L. ALL,
2100 Comer Building,
Birmingham, Alabama.

S. M. BRONAUGH,
2100 Comer Building,
Birmingham, Alabama.

CERTIFICATE OF COUNSEL.

I, E. L. All, one of the attorneys for petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

.....

Dated: May 26, 1944.